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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

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CHRONOSWISS, AG, a Swiss corporation, Plaintiff, vs. R&S ANTIQUES, INC, a California corporation, d/b/a DAVID ORGELL; and DOES 1 through 100, Defendants.	**CASE NO. ________________** **PLAINTIFF'S COMPLAINT FOR GOODS SOLD AND DELIVERED, BREACH OF CONTRACT, CONVERSION, AND DAMAGES PURSUANT TO P.C. 496(C)**

Plaintiff Chronoswiss AG, by and through its attorneys, Davis Graham & Stubbs LLP, for its complaint, alleges as follows:

NATURE OF THE ACTION

1. This action seeks recovery of the purchase price, under Cal. Comm. Code § 2-709, for luxury watches that Defendant R & S Antiques, Inc. d/b/a David Orgell, ordered, received, and accepted from Chronoswiss. The action also seeks damages for conversion, breach of

contract, and violation of Cal. Penal Code 496(c) related to watches Chronoswiss delivered to the Defendant on consignment and which Defendant has wrongfully, unlawfully and knowingly retained with return or payment.

PARTIES

2. Plaintiff Chronoswiss, AG ("Chronoswiss"), a luxury watch manufacturer, is a corporation organized and existing under the laws of Switzerland. Chronoswiss now, and at all times relevant to this Complaint, has and had its principal place of business at Loewenstrasse 16a, CH-6004, Lucerne, Switzerland.

3. Defendant R & S Antiques, Inc. d/b/a David Orgell ("Defendant" or "David Orgell"), a corporation organized and existing under the laws of the state of California, is a retailer of luxury watches, jewelry, antiques and home décor. David Orgell now, and at all times relevant to this Complaint, has and had its principal place of business at 262 North Rodeo Drive, Beverly Hills, CA 90201.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this action based upon diversity of citizenship and amount in controversy pursuant to 28 U.S.C. § 1332. Chronoswiss and David Orgell are citizens of Switzerland and California respectively, and the amount in controversy exceeds $75,000 exclusive of interest and costs.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) & (2).

FACTUAL ALLEGATIONS

A. Watches Purchased by David Orgell

6. In November 2015, David Orgell ordered thirteen luxury watches from Chronoswiss. The watches that David Orgell ordered are set forth in Invoice No. 40153807, dated December 4, 2015, and attached hereto as **Exhibit 1**.

7. The Invoice specifically identifies each style of watch ordered (the “Article”), a description of each watch, the number of watches of each style that David Orgell ordered, and the price for each watch. The Invoice also specifies the unique Case Number that appears on each watch ordered.

8. The total purchase price for the watches listed in the Invoice is $78,387.50. David Orgell agreed to pay the full purchase price for each of the watches listed in the Invoice.

9. Chronoswiss sent Invoice No. 40153807 to David Orgell, and David Orgell never objected to the invoice or the terms contained therein.

10. David Orgell agreed to pay the full purchase price within 60 days of receiving the invoice.

11. Chronoswiss shipped the thirteen watches on December 28, 2015, and David Orgell received the full shipment of watches December 29, 2015.

12. David Orgell accepted from Chronoswiss each of the watches that are listed on the Invoice.

13. David Orgell, however, did not make the $78,387.50 payment that was due sixty days after the invoice date. David Orgell has not made any payment toward to the $78,387.50 it owes to Chronoswiss.

14. Following David Orgell's failure to pay the purchase price when it was due, Chronoswiss made repeated demands for payment orally and in writing.

15. In April 2016, Chronoswiss contacted David Orgell to notify it that Chronoswiss had received no payment on Invoice 40153807, that payment was overdue, and requesting that David Orgell make the payment.

16. In June 2016, Chronoswiss contacted David Orgell to again demand payment of the overdue amount of $78,387.50. Chronoswiss provided David Orgell with a statement of account showing the balance due and notified David Orgell that it would charge 7% interest because the account was past due. The statement of account provided to David Orgell is attached hereto as **Exhibit 2**.

17. Chronoswiss also demanded that David Orgell pay the amount due, plus interest, in August and September, 2016.

18. David Orgell finally responded on September 7, 2016. In an email from Korosh Soltani at David Orgell addressed to Karlo Burgmayer at Chronoswiss, Mr. Soltani said, "I have spoken with my father this week, and will be making a payment next week."

19. On September 12, 2016, Mr. Soltani spoke by phone to Oliver Ebstein at Chronoswiss and promised to pay $10,000 by the end of the week. But David Orgell did not make any payment the following week.

20. On September 27, 2016, Chronoswiss again demanded immediate and full payment of all amounts due.

21. As of the date of this Complaint, Chronoswiss has not received any payment from David Orgell for the thirteen watches David Orgell ordered and received in December 2015.

B. Watches David Orgell Ordered on Consignment

22. In December 2015, David Orgell also ordered and received watches on consignment from Chronoswiss.

23. As shown on Invoice No. 40162366 (the "Consignment Invoice"), attached hereto as **Exhibit 3**, David Orgell ordered six watches on consignment with a total amount due to Chronoswiss, upon sale of the watches, of $30,515.00.

24. The Consignment Invoice specifically identifies each style of watch ordered (the "Article"), a description of each watch, the number of watches of each style that David Orgell ordered, and the price for each watch. The Consignment Invoice also specifies the unique Case Number that appears on each watch ordered.

25. The Consignment Invoice states that "[t]he proprietary right for delivered goods is kept by Chronoswiss AG until complete payment."

26. The Consignment Invoice also states that the payment term is "immediately," meaning that David Orgell agreed to remit the Consignment Invoice price for each watch sold immediately following sale of the watch.

27. Chronoswiss shipped the six consignment watches to David Orgell on December 7, 2015, and David Orgell received those watches on December 11, 2015.

28. David Orgell did not object to any of the consignment watches it received from Chronoswiss.

29. In September 2016, the Head of Accounting and Controller of Chronoswiss sent a statement of account to Korosh Soltani at David Orgell. The statement of account, attached hereto as **Exhibit 4**, showed the amount owed of $78,387.50 on Invoice No. 40153807, the amount owed on $30,515.00 on Invoice No. 40162366 for the consignment watches, and the amount of interest then due of $3,820.95. The total amount due on the statement of account was $112,723.45.

30. David Orgell did not object to the September 2016 account statement.

31. In a phone call on October 27, 2016, Mr. Soltani at David Orgell told Chronoswiss that he had sold two of the consignment watches and would pay for them immediately.

32. Chronoswiss demanded that David Orgell return the consignment watches. During the October 27, 2016 phone call, Mr. Soltani agreed to Chronoswiss' demand that he return the remaining consignment watches.

33. But David Orgell never paid Chronoswiss for the consignment watches it sold and never returned the remaining consignment watches. Chronoswiss made repeated demands for payment on, or return of, the consignment watches, and David Orgell ignored those demand.

34. Chronoswiss is informed and believes and thereon alleges, that at or around the time David Orgell failed to return the consignment watches and wrongfully retained the consignment watches that its conduct amounted to theft of the consignment watches.

35. Notwithstanding Chronoswiss' demands, and the fact that David Orgell has sold a number of the watches it received and accepted, David Orgell refuses to pay the purchase price for any of the watches it received.

36. As of February 15, 2017, David Orgell owes Chronoswiss $78,387.50 for the purchase price of the thirteen watches on Invoice No. 401538071 plus $5,649.55 in interest.

37. As of February 15, 2017, David Orgell owes Chronoswiss $30,515.00 for the price of the consignment watches on Invoice No. 40162366 plus $1,103.63 in interest.

CAUSES OF ACTION

COUNT I

Goods Sold and Delivered – Action for the Price

Cal. Comm. Code § 2709

38. Chronoswiss hereby repeats and re-alleges the allegations contained in Paragraphs 1 through 37 as if fully set forth herein.

39. David Orgell ordered thirteen watches from Chronoswiss and agreed to the purchase price of $78,387.50 for those watches.

40. Chronoswiss shipped to David Orgell the thirteen watches it ordered, and David Orgell accepted the shipment of the watches.

41. David Orgell failed to pay the purchase price of the watches when it came due.

42. David Orgell owes Chronoswiss $78,387.50 plus interest for the watches it ordered, received, and accepted.

COUNT II

Conversion

43. Chronoswiss hereby repeats and re-alleges the allegations contained in Paragraphs 1 through 42 as if fully set forth herein.

44. Chronoswiss delivered to David Orgell six watches on consignment. Under the terms of the consignment agreement, Chronoswiss retained title and ownership of the watches until they were sold.

45. Chronoswiss demanded that David Orgell return the consignment watches that it had not sold, and David Orgell has refused to do so.

46. By refusing to return the unsold consignment watches to Chronoswiss, David Orgell has intentionally, substantially, and wrongfully interfered with Chronoswiss' ownership of the watches.

47. Chronoswiss did not consent to David Orgell's retention of the watches after Chronoswiss demanded their return.

48. Chronoswiss was harmed and has suffered damages as a result of the conversion.

49. David Orgell's conduct was a substantial factor in causing Chronoswiss' harm.

COUNT III

Breach of Contract

50. Chronoswiss hereby repeats and re-alleges the allegations contained in Paragraphs 1 through 49 as if fully set forth herein.

51. David Orgell entered into a partially written and partially oral contract with Chronoswiss regarding six watches David Orgell received on consignment as set forth in Invoice No. 40162366.

52. The contract provided that Chronoswiss would retain ownership over the watches until they were sold by David Orgell.

53. The contract further provided that David Orgell would immediately pay Chronoswiss the invoice price for each consignment watch it sold.

54. David Orgell sold at least two of the consignment watches but breached the contract by not paying Chronoswiss the invoice price for those watches.

55. David Orgell further breached the contract by failing to return consignment watches it had not sold but agreed to return.

56. Chronoswiss has fully performed its obligations under the contract.

57. Chronoswiss has suffered damages as a result of David Orgell's breach of contract.

COUNT IV

Violation of Cal. Penal Code § 496

58. Chronoswiss hereby repeats and re-alleges the allegations contained in Paragraphs 1 through 57 as if fully set forth herein.

59. David Orgell is in possession of Chronoswiss' consignment watches wrongfully, as the result of David Orgell's conversion of the watches, in a manner that constitutes theft.

60. Chronoswiss is informed and believes and thereon alleges, that on or around the time Chronoswiss demanded the return of the consignment watches, and David Orgell failed to return the watches, that David Orgell knew it was retaining the watches in a manner that constitutes theft.

61. Chronoswiss is informed and believes and thereon alleges, that David Orgell has sold some of the watches it wrongfully withheld from Chronoswiss and wrongfully retained the proceeds of those sales.

62. As a result of the foregoing, David Orgell is liable to Chronoswiss for treble damages and an award of attorney's fees and costs pursuant to California Penal Code section 496(c).

PRAYER FOR RELIEF

WHEREFORE, Chronoswiss prays for judgment against David Orgell as follows:

A. For a decree ordering David Orgell to pay Chronoswiss the purchase price of $78,387.50 plus interest of $5,639.55 for the watches David Orgell purchased on Invoice No. 40153807;

B. For a decree ordering David Orgell to pay Chronoswiss the purchase price of $30,515.00 plus interest of $1,103.63 for the consignment watches on Invoice No. 40162366 that David Orgell has wrongfully withheld and refused payment on;

C. For additional damages as proven at trial;

D. For post-judgment interest on the amounts owed from the date of judgment until it is paid;

E. For incidental costs under Cal. Com. Code § 2710;

F. For treble damages on the Fourth Cause of Action pursuant to Penal Code section 496(c);

G. For the costs and fees of bringing this action; and

H. For such other relief as the Court deems just and proper.

DATED: March 8, 2017

DAVIS GRAHAM & STUBBS LLP

By /s/ *Ericka F. Houck Englert*
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ATTORNEYS FOR PLAINTIFF